IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 7879 of 2004

Makarand Bhikaji Bagade and ors..Petitioners
vs
State of Maharashtra and anr...Respondents

Mr.Uday Warunjikar for petitioners
Mr. Nitin Deshpande AGP for State

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 29.4.2005

P.C:

. Heard Mr. Warunjikar, learned counsel appearing for petitioners and Mr Nitin Deshpande, learned Asst Government Pleader for respondents.

l. The lst petitioner is a society registered under the provisions of the Societies Registration Act as well as Bombay Public Trusts Act. The lst petitioner is running the 2nd petitioner school for mentally retarded children at Wai, District Satara. There are approximately 29 boys and 26 girls taking education in the petitioner's school. The students come from remote place of Wai taluka and for their transport the lst petitioner has procured a mini bus with the financial aid given by the German Consulate. The 3rd petitioner has been engaged as driver of the bus since l997. The State of

Maharashtra has formulated the Special School Code of l985, hereinafter called the 'Code' for the schools for handicapped children. The posts of driver and attendant were shown in the staffing pattern prescribed by the Code. The Code was revised in l997 and in the revised Code the post of driver was shown in the staffing pattern but the post of attendant was deleted. Under the revised Code the school must have a l6 seater bus and the educational qualification for the post of driver is passing of l0th std plus driving licence.

2. By Government Resolution dated l8.8.2004 a new staffing pattern was introduced for the school for the handicapped children. In the new staffing pattern the post of driver is also deleted. It appears that the petitioners have been making representation to the authorities for sanctioning the post of driver for the school bus. By letter dated 2l.7.2004 issued by the Social Welfare Officer, Zilla Parishad, Satara, the request of the petitioners for sanctioning the post of driver was turned down on the ground that the post is not admissible under the new staffing pattern. The legality and validity of this letter is questioned in this petition under Article 226 of the

Constitution of India.

3. On behalf of the State Government it is contended that the children with disabilities are getting 75% concession in the fair in State Transport Buses while they travel to attend the school and 50% concession is provided to the escort in the bus fare of the State Transport Bus. Some of the local bodies also provide free transport facilities through their transport to the children with disabilities to attend the school. It is also contended that most of the schools are residential schools providing education to the handicapped children within the premises alongwith hostel facilities and, therefore, the State Government has taken a decision not to sanction the posts of driver and attendant. It is also pointed out that the Government has constituted district level committee headed by Additional Chief Executive Officer of the Zilla Parishad to ensure that the above facilities are provided in the concerned district.

4. Mr.Warunjikar has strenuously contended that decision of the Government not to sanction the posts of driver and attendant for the school is in

total violation of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, l995, (hereinafter referred to as ‘Act’). The learned counsel urged that section 30 of the Act casts a duty on the State Government which is an appropriate Government to make provision for transport facilities to the children with disabilities or in the alternative financial incentives to parents to enable their children to attend schools. Similarly under section 26 of the Act, the Government has to ensure that every child with a disability has access to free education in the appropriate environment. Therefore he submitted that the action of the Government is contrary to the provisions of the Act. The learned counsel also submitted that the facilities provided by the State Transport in rural areas are wholly inadequate. Most of the students come from interior places, who are from the farmers families and they are unable to provide escort for their children and, therefore,without school bus it would not be possible for the students to attend the school. On the other hand the learned AGP Mr Deshpande supported the stand taken by the Government and contended that having regard to the

fact that concession is provided in the State Transport Buses as well as buses of local bodies the State Government has decided not to sanction the post of driver and attendant to the said school.

5. For proper appreciation of the rival contentions of the parties it will be useful to notice the relevant provisions of The Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation), Act l995. The Act in question was passed by Parliament which intends to provide for the following as is apparent from the Statements of Objects and Reasons:

> "(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training,employment and rehabilitation of persons with disabilities;
>
> (ii) to create barrier-free environment for persons with disabilities;
>
> (iii) to remove any discrimination against

persons with disabilities in the sharing of the development benefits, vis-a-vis, non-disabled persons;

iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

v) to lay down strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

vi) to make special provision for the integration of persons with disabilities into the social mainstream"

The Committees constituted by the Central Government as well as by the respective State Governments must, therefore, make an earnest endeavour to achieve the objectives, as indicated above, in exercise of their powers conferred under the Act.

6. Chapter V of the Act deals with the education of children with disabilities. Section 26 of the

Act casts an obligation on the appropriate Government and local authorities to provide children with disabilities free education etc.and reads as under:

> "26. Appropriate Government and local authorities to provide children with disabilities free education, etc-
>
> The appropriate Government and the local authorities shall-
>
> a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;
>
> b) endeavour to promote the integration of students with disabilities in the normal schools;
>
> c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such

schools;

d) endeavour to equip the special schools for children with disabilities with vocational training facilities."

7. Section 30 of the Act casts an obligation on the appropriate Government to prepare a comprehensive education scheme providing for transport facilities , supply of books etc. Section 30 reads as under:

"30. Appropriate Government to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc-

Without prejudice to the foregoing provisions,the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make provision for-

a) transport facilities to the children with disabilities or in the alternative financial incentive to parents or guardians to enable their children with disabilities to attend

schools;

b) the removal of architectural barriers from schools, colleges, or other institutions imparting vocational and professional training;

c) the supply of books, uniforms and other materials to children with disabilities attending school;

d) the grant of scholarship to students with disabilities;

e) setting up of appropriate fora for the redressal of grievance of parents regarding the placement of their children with disabilities;

f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;

g) restructuring of curriculum for the benefit of children with disabilities.

h) restructuring the curriculum for benefit of students with hearing impairment to facilities them to take only one language as part of their curriculum."

8. It must be borne in mind that the right to education guaranteed under the Constitution of India extends in its ambit to all persons, but carries a greater significance for those who are physically or mentally 'challenged'. They must, therefore, be the beneficiaries of every action carried out by the State in response to its responsibilities under the relevant constitutional mandate. In our country even today there is large number of physically handicapped as well as mentally retarded children who are getting ignored because of lack of educational facilities though there exists a constitutional directive. We fail to appreciate the stand taken by the State Government in the present case that there is no need to provide school bus because State Transport and other local bodies are providing concessions to the handicapped students and their escorts. Apart from the fact that bus service provided by the State Transport is totally inadequate it is a fact

that many families are unable to provide escort for their children. It is not disputed that the posts of driver and attendant were provided in the staffing pattern right from l985 and we do not see any justification for excluding these posts in the new staffing pattern. In our opinion as far as non resident schools for handicapped children are concerned, school bus is a matter of necessity and, therefore it is necessary to provide for driver and attendant for the bus meant for the handicapped children. We therefore direct the State Government to forthwith restore the pre l997 position and include the posts of driver and attendant in the staffing pattern for the handicapped children as far as the non resident schools are concerned. As far as the resident schools are concerned the matter may be referred to the Chief Commissioner who shall consider the same afresh in the light of the provisions of sections 26 and 30 of the Act and make appropriate recommendations to the State Government within three months from today. The State Government shall take a decision in that behalf within two months from the date of receipt of the report.

9. Before parting with this matter it may be

mentioned that 3rd petitioner was employed prior to the revision of the Special School Code l997 and, therefore, requirement of age as per the revised Code is not attracted. Respondents are directed to regularise the appointment of petitioner no. 3 without raising objection of age bar and release salary grant in respect of the driver with effect from the date of filing of this petition.

Petition stands disposed of accordingly